IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12509 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUMTAZ @ SAMIR MOHMMED FAKRUDDIN SHAIKH
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR ASIFKHAN I PATHAN for Petitioner.
RULE SERVED BY DS for Respondent No. 1.
DS AFF.NOT FILED (R) for Respondent No. 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/08/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged his detention order dated 15-09-2005, by which he is

detained as a “dangerous person” under PASA. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the petitioner. Both these cases are registered against the petitioner under Sections 379 and 114 of the Indian Penal Code. It is alleged that because of activity of the petitioner, the public order is disturbed. The detaining authority also recorded the statements of witnesses, whose names have not been disclosed. After arriving at subjective satisfaction, the detaining authority has passed the order of detention against the petitioner.

Mr.Pathan, learned advocate for the petitioner submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. He also submitted that statements of witnesses are recorded only in order to give life to detention order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the

> case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

It is also argued by learned advocate for the petitioner that the petitioner was already in judicial custody at the time of passing of detention order and it was not necessary to detain him under PASA.

So far as pending criminal cases are concerned, in my view, it can be said that the petitioner has violated law and order and registration of aforesaid cases, itself, cannot be said to be an act of violating public order. There is nothing on record to suggest that registration of criminal case may amount to disturbing the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.

Considering the aforesaid aspect of the matter, this petition is required to be allowed and the order of the detention is required to be quashed, as it cannot be said that the petitioner has violated public order and at the most it can be said that the petitioner has violated law and order.

In order to see that the detenu is not tempted to commit the offence again learned advocate for the petitioner has made a voluntary statement that if the detenu is released on bail by competent Court he will not enter Surat city upto 31st October, 2006 except for attending the

criminal cases. This voluntary statement is recorded. It is for the concerned authorities to monitor the same.

For the foregoing reasons, this petition is allowed. Order of detention dated 15-9-2005 is quashed and set aside. Petitioner – Mumtaz @ Samir Mohmmed Fakruddin Shaikh is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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